

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF MAY 22, 2013
REFERRED FROM: COUNSEL'S OFFICE

2013-01358

REASON FOR REFERRAL
REQUEST FOR DIRECTION

AUTOMATED DRINK DISPENSER

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on MAY 22, 2013 determined:

VICTOR & BERNSTEIN, P.C.
ATTORNEYS AT LAW

18 EAST 41ST STREET
NEW YORK, NEW YORK 10017

TEL 212/486-6000
FAX 212/486-8668

SAUL L. VICTOR
DONALD M. BERNSTEIN

MARTHA M. REDO
ALEXANDER B. VICTOR

April 5, 2013

RECEIVED
APR - 8 2013
STATE LIQUOR AUTHORITY
OFFICE OF COUNSEL

Jacqueline Flug, Esq.
Counsel
New York State Liquor Authority
317 Lenox Avenue, 4th Floor
New York, NY 10027

*Re: Request for Declaratory Ruling on
Automated Drink Dispensers*

Dear Ms. Flug:

This shall constitute a request for a declaratory ruling pursuant to Rule 98.1 of the Rules of the New York State Liquor Authority that the proposed method of operation for an on-premises licensed establishment as set forth and described below would not be inconsistent with the Alcoholic Beverage Control Law or the Rules of the New York State Liquor Authority.

The premises for which my client will ultimately apply for will comply with all laws, rules and regulations required for an on-premises liquor license. The premises will have a stand-up bar and seated table food service.

In addition, the premises would also have an automated drink vending machine. Patrons 21 years of age or older will be able to purchase a token and insert the token into the machine which then dispenses a mixed alcoholic beverage of the purchaser's choice. A similar type of vending machine, the "Smart Bar," can be viewed at www.smartbarusa.com. My client intends to use the technology of the Smart Bar with a customized look and feel on the front to fit their particular venue's needs and with a different serving method -- i.e., tokens. Tokens will be sold and supplied by cashiers who will require legally sufficient identification just as if a patron was ordering a drink to be served directly by a bartender at a stand-up bar. The premises will also have employees monitoring the machine to ensure that no underage patrons use tokens or receive drinks and to otherwise ensure compliance with law. Additionally, during busy late night hours the premises will have New York State licensed security at the door to check identification.

Jacqueline Flug, Esq.
New York State Liquor Authority
April 5, 2013
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VICTOR & BERNSTEIN, P.C.
ATTORNEYS AT LAW

The original labeled bottles of alcoholic beverages are fitted inside the vending machine and are connected by tubes to the dispensing mechanism. Each separate bottle is dispensed independent of any other so there is no contamination, and no mixture of alcoholic beverages until they are poured in the glass or flask.

The vending machine will be secured in the location designated on the floor plan just as a permanent bar would be. The equipment will be locked and secured so that it cannot be moved, tampered with nor broken into. The back of the machine will not be accessible to patrons, and can only be opened by staff for cleaning, maintenance, and replacement/addition of inventory.

Alcoholic Beverage Control Law § 100(4) states, in part, that “[a]lcoholic beverages may be sold to be consumed on the premises at a bar, counter or similar contrivance.” To our knowledge, the New York State Liquor Authority, as well as licensing authorities in other states, has approved a vending dispensing machine for the sale of alcoholic beverages. Examples in New York include the former Vinatta Project at 69 Gansevoort Street and SD26 WineBar & Lounge at 19 East 26th Street, New York, New York. We believe that the machine described herein satisfies the requirements of another “similar contrivance” in the ABC Law and is therefore permitted to be used in licensed premises. We respectfully request a declaratory ruling to that effect.

Very truly yours,



Donald M. Bernstein

DMB:to

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF MAY 22, 2013
REFERRED FROM: LICENSING BUREAU

2013-01359

REASON FOR REFERRAL
REQUEST FOR DIRECTION

DELEGATION OF AUTHORITY – LICENSING BOARD

The Members of the Authority at their regular meeting held at the Zone I New York City Office on MAY 22, 2013 determined:

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF MAY 22, 2013
REFERRED FROM: COUNSEL'S OFFICE

2013-01359D

REASON FOR REFERRAL
REQUEST FOR DIRECTION

FILING OF PRICE SCHEDULES

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on MAY 22, 2013 determined:

BUCHMAN LAW FIRM, LLP

NEW YORK, NY • (212) 888-4220
METROPARK, NJ • (732) 632-6080
SAN FRANCISCO, CA • (415) 434-5740
WASHINGTON, DC • (202) 838-8363

TEN EAST 40TH STREET
SUITE 2110
NEW YORK, N.Y. 10016

TELEPHONE (212) 888-4220
FACSIMILE (212) 888-4221

A NEW YORK
LIMITED LIABILITY
PARTNERSHIP

www.buchmanlaw.com

April 17, 2013 (Amended May 13, 2013)

Via Email/Original via Federal Express

Hon. Dennis R. Rosen, Chairman
New York State Liquor Authority
80 S. Swan Street, Suite 900
Albany, NY 12210

Attn: Paul Karamanol, Esq., Senior Attorney

Re: Constellation Brands, Inc. – Serial No. 3141135
Constellation Brands SMO LLC – Serial No. 1023873
Request for Declaratory Ruling

Dear Chairman Rosen:

We are writing on behalf of our client, Constellation Brands, Inc. ("CBI"), and their wholly-owned subsidiary, Constellation Brands SMO, LLC ("CBSMO"), both of which are licensed NYS Wholesalers.

By letter dated February 26, 2013, we requested clarification from Counsel's Office as to the appropriate entity to register the Svedka vodka brand. CBSMO is the trademark owner of Svedka and is responsible for purchasing the product from the foreign distillery in Sweden, prior to importation into the country. There are two ways in which the Svedka products are imported into and sold in the U.S.:

A. For finished product brought into the U.S., which includes some of the flavored vodka items, the Swedish distillery transfers title of the product "Ex Works" (i.e., when the goods are loaded on the carrier in Sweden) to CBSMO. CBSMO then transfers title to CBI when the product is ready for shipment to wholesale distributors. Based on this arrangement, CBSMO, as the importer of record, holds the applicable federal Certificates of Label Approval ("CoLA") for these items. It has also registered the brand with the State Liquor Authority.

B. For the standard vodka and many of the flavored vodka and specialty items, the Swedish distillery ships bulk base vodka to a designated third party distilled spirits plant in Kentucky, who imports the bulk and is responsible for rectifying,

BUCHMAN LAW FIRM, LLP

flavoring and/or bottling the product before it is sold into the U.S. market. Pursuant to federal regulations, the third party bottler holds the appropriate CoLA's to release these products into the U.S. market. Title to the products transfers from CBSMO to CBI when it is ready to be shipped from the Kentucky plant to wholesale distributors. Again, CBSMO, as brand owner, registers the brand with the Authority.

Effective March 1, CBSMO named CBI as its exclusive national brand agent for Svedka, authorizing it to sell the brand (pursuant to CBI's wholesale licenses and shipper permits) to wholesale distributors across the country, including those named to handle the brand in New York State. At that time, CBSMO sales representatives moved to CBI, leaving CBSMO with no sales responsibility. CBSMO now manages the trademark and brand marketing of Svedka worldwide from its New York office.

As a result of this change, which has helped to maximize efficiency, CBSMO voluntarily surrendered its out-of-state shipper's permits because it would no longer make sales to other states. In follow up correspondence to Counsel's Office dated March 7, we sought clarification as to whether CBSMO may surrender its NYS Wholesale license and transfer its brand registrations to CBI. We were advised, however, that if CBSMO was to maintain its principal office in New York and purchase inventory from the distillery in Sweden for transfer to CBI, irrespective of who ultimately imports the product into the country, it would need to keep its NYS Wholesale license. We indicated that CBSMO would also keep its Federal Importer's Basic Permit in New York and retain the CoLA's attached to it.

Based on the above facts, we seek formal approval from the Members of the Board that CBSMO may authorize CBI, as its exclusive NYS brand agent, to make all price filings on its behalf, in order to schedule the Svedka brand items to other NYS wholesalers and/or retailers. A copy of CBSMO's designation letter to CBI is attached for your reference.

Under these circumstances, CBSMO represents that it will keep its NYS Wholesale Liquor license active for as long as it maintains its principal place of business in New York State. During this time, it will only sell its products to CBI, and title will transfer to CBI before any product enters New York State. Notwithstanding the above, CBSMO may arrange for exports of the flavored Svedka vodka items bottled at the KY distillery to buyers in other countries but such exported items will not physically enter New York State.

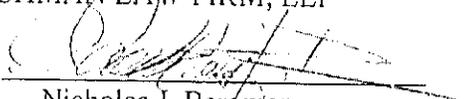
Please do not hesitate to contact me at (212) 889-4220 or via email at njbergman@buchmanlaw.com, if you have any questions or require additional information.

BUCHMAN LAW FIRM, LLP

Thank you for your time and consideration of this matter.

Very truly yours,

BUCHMAN LAW FIRM, LLP

By: 

Nicholas J. Bergman

Cc: Kerri J. O'Brien, Deputy Commissioner
Jacqueline P. Flug, Counsel to the Authority
Thomas I. Donohue, Special Counsel
Constellation Brands, Inc.
Constellations Brands SMO, LLC



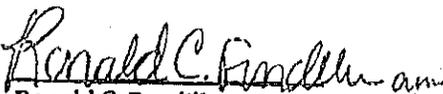
**Constellation
Brands**

January 22, 2013

TO WHOM IT MAY CONCERN:

This is to confirm that Constellation Brands SMO, LLC, formerly Spirits Marque One LLC, ("SMO") hereby consents to the use, by its exclusive agent, Constellation Brands, Inc., of all label approvals, labels, brand registrations, price postings, trademarks, tradenames and all other documentation and indications necessary to sell SVEDKA vodka as fully and freely as SMO has in the past.

Sincerely yours,
CONSTELLATION BRANDS SMO, LLC

By: 
Ronald C. Fondiller
Vice President and Secretary

Our vision: To elevate life with every glass raised

Constellation Brands SMO, LLC · 598 Madison Ave, 4th Floor · New York, NY 10022
www.cbrands.com